

MEMORANDUM

September 17, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: TALIN HALABI
Deputy County Counsel
Public Works Division

TRUC L. MOORE
Senior Associate County Counsel
Public Works Division

RE: U.S. Fire v. City of Los Angeles, et al.
Los Angeles Superior Court Case No. BC 361342

DATE OF
INCIDENT: November 12, 2003

AUTHORITY
REQUESTED: \$65,000

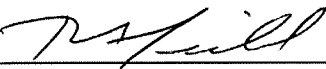
COUNTY
DEPARTMENT: Department of Public Works - Flood Control District

CLAIMS BOARD ACTION:


☒ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval


_____, Chief Executive Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on September 17, 2007

SUMMARY

This is a recommendation to settle for \$65,000, a subrogation action for inverse condemnation filed by Plaintiff U.S. Fire Insurance Company ("USFI") against the City of Los Angeles ("City"), the Los Angeles Flood Control District ("District") and the County of Los Angeles ("County"), arising from a flooding event that damaged a property insured by USFI.

LEGAL PRINCIPLES

A public entity is liable in inverse condemnation when it substantially participates in the design, construction, or maintenance of a public work, which as designed and constructed, causes damage to private property.

SUMMARY OF FACTS

The property at issue is an apartment building located at 2250 East 111th Street in the Watts community of South Central Los Angeles ("Property"). The Property is a newly constructed, 78-unit, low-income housing project owned by the insured, Simpson Housing. The notice of completion for the Property is dated October 30, 2003, with occupancy beginning shortly thereafter. USFI was the insurer of the Property at the time of the flood.

On November 12, 2003, a 50-square-mile storm cell stalled over the southern portion of the County. The storm severely affected the Watts community where the Property is located, as well as neighboring cities and unincorporated areas. Approximately 5.4 inches of rainfall accumulated in the area, most of which fell during the hours of 3:30 p.m. and 6:30 p.m. An additional 250 structures in the area, including those both upstream and downstream from the Property, were damaged as a result of the storm.

USFI contends that during the storm, surface water was diverted from its natural drainage pattern towards the Property by way of the District's storm drain system and the City's streets and improvements. The storm drain system was allegedly overwhelmed by the runoff, which caused the water to be thrown back onto the surface streets and into the subterranean garage and first floor of the Property. The subterranean garage was allegedly submerged under more than 8 feet of water.

The City owns, maintains and operates the public streets in the vicinity of the Property. Both the City and District own, maintain, and operate inlet structures within the public streets that connect to the storm drains that are

also owned, maintained, and operated by the District, including a 21-inch Reinforced Concrete Pipe ("RCP"). This RCP is located in the street immediately adjacent to the Property. The RCP is a small lateral which connects to a larger storm drain system known as the Glen Avenue Drainage System ("Drainage System"). This Drainage System affects an area of approximately 10 square miles and outlets into Compton Creek which then outlets into the Los Angeles River.

Based on a review of design plans and transfer documents, the Drainage System appears to have been constructed by the County shortly after the Los Angeles County Board of Supervisors ("Board") approved the plans in November 1935. On May 2, 1944, the Board, as the governing body of the District, adopted a resolution accepting transfer of the Drainage System from the County for maintenance and operational purposes.

On November 3, 2006, USFI filed this action against all defendants under an inverse condemnation cause of action to recover moneys paid to the insured, Simpson Housing, for damages resulting from the November 12, 2003, flood. This office filed an Answer to the Complaint on behalf of the County and District.

DAMAGES

The flood allegedly caused structural damage to the Property and damage to its fixtures. USFI is seeking damages in the amount of \$529,406.67 for costs of labor, material, and services involved in the clean up and repair of flood damages to the Property, as well as for economic losses claimed by tenants.

USFI is also seeking prejudgment interest at the rate of 7 percent per annum from the date of loss in the amount of \$150,000. Finally, USFI contends that it has incurred attorney's fees and expert costs in excess of \$200,000. Accordingly, USFI is claiming a total loss of approximately \$900,000.

STATUS OF CASE

Trial in this matter is set for February 4, 2008, before Judge Maureen Duffy-Lewis in Department 38 of the Los Angeles County Superior Court, Central District.

On July 17, 2007, the parties participated in a mediation session before Retired Judge Barnet Cooperman of ADR Services. By the conclusion of the mediation, USFI had reduced its demand from \$900,000 to \$150,000. The

City and District, however, were unwilling to settle at this amount. Thereafter, subsequent mediation efforts by Judge Cooperman culminated in the proposed settlement of \$130,000. The City and the District would each pay \$65,000 toward the settlement.

The District has incurred litigation costs to date totaling approximately \$53,427. This includes in-house attorney fees of approximately \$52,393 and litigation costs of approximately \$1,033.

EVALUATION

Should this matter proceed to trial, USFI will argue that the public streets and the District's Drainage System caused more water to flow towards the Property than would otherwise have occurred.

According to USFI's hydrology expert, Mr. Theodore Hromadka, the City and the District increased the level of water flow to the Property for the benefit and protection of upstream properties. It is Mr. Hromadka's opinion that, in designing the Drainage System, the City and the District chose to protect the vast majority of properties upstream by "compromising a few" downstream properties. This is allegedly evidenced by the fact that the area where the Property is located was not historically subject to flooding.

The District does not agree with USFI's position. At trial, it will argue that there is no inverse liability because USFI has not established a direct causal connection between the flooding of the Property and the Drainage System. Nor has USFI shown that the Drainage System as designed and constructed, substantially caused the flooding at the Property. The District will argue that an independent force, the extraordinary storm, caused the flooding.

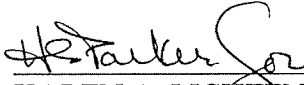
The District will also argue that USFI has not produced evidence to support its allegation that the Drainage System caused an increased level of water to flow towards the Property for the benefit and protection of upstream properties. A system of catch basins in the vicinity of the Property was designed and constructed for the specific purpose of protecting the Property and neighboring properties by capturing surface water in the area and directing it towards the mainline.

While we believe the preponderance of the evidence will show that the District's Drainage System did not cause the flooding at the Property, we also recognize that a trier of fact could find otherwise.

Furthermore, this is predominantly an expert driven case. The District may need to retain expert consultants, including a hydrologist, a hydraulics specialist and a damages/valuation expert to assist in evaluating USFI's claims and to prepare for trial. We estimate our consultants' fees alone will total approximately \$150,000 during the course of the litigation, including preparation for and attendance at trial.

A potential finding of liability, when combined with an award of attorney and expert fees to USFI under inverse condemnation, as well as the cost to defend the District at trial, would greatly exceed the recommended settlement amount of \$65,000. In light of the substantial costs and risks of proceeding to trial, we recommend that this litigation be settled. The Department of Public Works concurs with this recommendation.

APPROVED:



KAREN A. LICHTENBERG
Assistant County Counsel
Public Works Division

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